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Gates vows to quit CIA if told to withhold information

✓ By Bill Gertz
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A CIA Deputy Director ~~Robert~~ Gates yesterday told the Senate Intelligence Committee that he would consider resigning if the president asked him to withhold information from Congress about covert operations.

The issue has raised constitutional legal questions over the separation of powers between Congress and the administration.

"Both the executive and the legislature have an interest in a relationship of trust between the intelligence committee and CIA," Mr. Gates said. "The point at which I would contemplate resignation would be the point that I made the judgment that the withholding threatened that trust."

Mr. Gates, 43, will be the youngest man ever to head the CIA if he is confirmed as expected. He faced an intense session yesterday, during

which he said the CIA's relationship with Congress was put in "very serious jeopardy" by the administration's Jan. 17 presidential "finding" not to notify Congress of the sale of arms to Iran.

It was the first time since 1980 when Congress passed the Intelligence Oversight Act that an administration withheld details about a covert action program, he said.

The act requires the administration to notify Congress about significant intelligence activities in a "timely fashion," but avoided defining "timely" in order to prevent a constitutional showdown.

"I believe the long period of withholding went beyond the bonds of the compromise," Mr. Gates said. "I believe it stretched the comity between the two branches to the breaking point."

Mr. Gates' remarks drew a sharp response from Sen. Orrin Hatch, Utah Republican, who argued that such assurances of congressional notification were an "unnecessary

concession" to executive branch authority.

"You have a constitutional duty to the president, too," said Mr. Hatch, noting that under certain circumstances the administration could hold off from informing Congress for "four or five months" when national security was involved.

Mr. Hatch, until last year the chairman of the Senate Judiciary Committee, said the president has the authority to direct that covert activities be carried out by agencies other than the CIA and that presidential "findings" can be issued verbally, without a written order.

"There are in fact constitutional times when things should not be brought up here" before Congress, Mr. Hatch said.

Earlier, under questioning from Sen. Bill Bradley, New Jersey Democrat, Mr. Gates presented a hypothetical case of a rescue attempt of American hostages where he would not notify Congress.

"If it was genuine risk of life and

death and it would take six days, instead of four, that would not be an issue over which I would resign," Mr. Gates said. "I would begin to be very concerned if the matter went beyond more than several days. Certainly not 14 months."

John Norton Moore, former chairman of American Bar Association's Standing Committee on Law and National Security, said the issues involved in the covert activities notification were "very serious" questions of constitutional law.

"Congress has been codifying its view and presenting the administration with a fundamental problem: If the president doesn't challenge Congress' interpretation, they say he violated the law," Mr. Moore said. "But if he does challenge Congress, he risks violating his constitutional oath to maintain the separation of powers."

Mr. Moore, now the director of the University of Virginia Center for Law and National Security, said he believes Congress does not have the

constitutional authority to require "blanket" administration notification of all covert operations. The issue could be resolved by the Supreme Court, he said.

Congress' interpretation that notification should be made within hours or days of a covert finding "is not the best interpretation of the act," Mr. Moore said.

Because of the risks in compromising the most secret operations by increasing the circle of those with knowledge about it, notification should be done "functionally" — weighing each operation, he said.

"This kind of writing into statute is a very serious policy problem for the United States," Mr. Moore said. "We are fusing a series of constitutional crises at a time when we can't afford it."

Other legal questions addressed during Mr. Gates' testimony revealed that agency officials violated CIA "internal regulations" by arranging for a November 1985 weapons shipment to Iran without proper authorization.

Mr. Gates also said that a CIA station chief in Costa Rica had been placed on "administrative leave" after the agency's inspector general learned the man, identified by the code name Thomas Castillo, had misled internal CIA investigators about the agency's involvement with private arms suppliers to the Nicaraguan resistance. A

Mr. Gates told the committee that when Congress passed the Boland Amendment preventing any CIA involvement with the Nicaraguan resistance, the CIA tried to "build as big a buffer as possible" between the agency and any activities involving the rebels. As a result the agency knew little about a private arms supply network.

He also said the CIA feared investigating American citizens who were assisting the Contras because the agency is banned from spying on Americans.